

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARTHUR MONTOUR, et al.,

Defendants.

Case No. CR09-0214 MJP

**ORDER GRANTING DEFENDANT
NATIVE WHOLESALE SUPPLY'S
MOTION TO QUASH**

This matter comes before the Court on Defendant Native Wholesale Supply's motion to quash portions of a subpoena. (Dkt. No. 310.) The Court has considered the motion, the government's response (Dkt. No. 335), NWS's reply (Dkt. No. 341), and all documents submitted in support thereof. For the reasons set forth below, the Court GRANTS NWS's motion to quash sections 4(b) and 4(c) of the government's subpoena. (See Dkt. No. 310 at 7.)

Background

On April 14, 2010, the government sent a subpoena to NWS's custodian of records seeking three categories of documents: (1) marketing agreements it had with the any co-Defendant, (2) corporate tax returns "for any governmental taxing authority, including the United

1 States, any state, and any Indian tribal authority or entity,” and (3) corporate financial statements
 2 “including but not limited to balance sheets, statements of assets and liabilities, income, and cash
 3 flow.” (Dkt. No. 310 at 7.) The subpoena directs the custodian for NWS to appear with the
 4 documents on the first day of the trial. (Dkt. No. 310 at 6 (trial then scheduled for May 3,
 5 2010).) NWS does not object to the production of marketing agreements, but does object to the
 6 production of tax records and financial statements.

7 Discussion

8 Fed. R. Crim. P. 17(c) provides a “subpoena may order the witness to produce any books,
 9 papers, documents, data or other objects the subpoena designates.” The court may “quash or
 10 modify the subpoena if compliance would be unreasonable or oppressive.” Fed. R. Crim P.
 11 17(c)(2). Subpoenas *duces tecum* in criminal cases are “not intended to provide a means of
 12 discovery for criminal cases.” United States v. Nixon, 418 U.S. 683, 698 (1974) (citing Bowman
 13 Dairy Co. v. United States, 341 U.S. 214 (1951)). To merit production before trial, a prosecutor
 14 must “clear three hurdles: (1) relevancy; (2) admissibility; [and] (3) specificity.” Id. at 699.
 15 Mere conclusory statements are insufficient to establish relevance and merit production under
 16 Fed. R. Crim. P. 17. See United States v. Eden, 659 F.2d 1376, 1381 (9th Cir. 1981).

17 NWS frames the issue in terms of its “undue burden,” but the motion focuses on whether
 18 the evidence sought would be relevant and admissible. (See Dkt. No. 310 at 2-3.) The
 19 government has failed to articulate why NWS’s corporate tax returns or financial statements are
 20 relevant to the issues at hand. While the Court recognizes that such documents “can show the
 21 financial status of the corporation,” the government does not explain how NWS’s financial
 22 health bears on the counts in the Indictment. (Dkt. No. 335 at 3.) Defendants will be tried for
 23 conspiracy and trafficking in contraband cigarettes; they are not charged with failing to pay
 24 taxes. The broad requests for all tax returns filed with any entity and all financial statements
 25 describing any cash flow are simply not tailored to the allegations in the Indictment, which
 26 focuses on NWS’s business directed to Washington State. The government’s conclusory

1 statements regarding relevance are insufficient to justify production. See Eden, 659 F.2d at
2 1381.

3 The Court is careful to note that it is not quashing the subpoena based on NWS's
4 argument that the government must only proceed to trial on the documents it presented to the
5 grand jury. (See Dkt. No. 310 at 2.) NWS offers no legal support for this proposition.

6 **Conclusion**

7 Because the government has failed to establish the relevance, admissibility, or specificity
8 of the documents requested, the Court GRANTS NWS's motion to quash sections 4(b) and 4(c)
9 of the government's subpoena. NWS need not supply corporate tax returns or corporate
10 financial statements as requested. The Clerk shall transmit a copy of this Order to all counsel of
11 record.

12 Dated this 21st day of July, 2010.

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15 Marsha J. Pechman
16 United States District Judge
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